IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 18 OF 2005
IN
COMPANY APPLICATION BO.38 OF 2001

Official Liquidator
High Court of Bombay,
Panaji Bench. .... Applicant

Versus

Shri Pramod G. Naik & Ors. .... Respondents

Ms. Amira Razaq, Advocate for the Applicant.

Mr. Shivan Dessai, Advocate for Respondents No. 1 & 3.

CORAM: **N. A. BRITTO, J.**

DATE: **28th April, 2006**

ORAL ORDER

Heard Ms. Razaq, the learned Counsel on behalf of the Applicant and Shri Shivan Dessai, the learned Counsel on behalf of Respondents No. 1 & 3. Respondent No. 2 has chosen not to contest this application.

2. There is no dispute that in Company Application No.38-O-2001 the Official Liquidator had made a claim for a sum of Rs.70,473/- as on 01/01/1999 with interest at the rate of 20% against the respondents. No affidavit in evidence was filed in the aforesaid proceedings. However, this Court by order dated 10/08/2001 observed thus;

> "The learned Official Liquidator has filed an affidavit in this Court stating that the Respondent No.1 has remitted a sum of Rs.10,000/- on 3rd July 2001 as per the order of the Court and in these circumstances appropriate orders be passed. Since the Respondent No.1 has already paid the aforesaid amount, there is no purpose in prosecuting this claim further. Therefore, in view of the affidavit, Company Application No.38-O/2001 is dismissed"

3. The affidavit which has been referred to by this Court in the above order was not filed in proceedings No.38-O-2001 but in proceedings bearing No. 35-O-2001. As already stated there was no affidavit filed in the proceedings which are purported to have been disposed of by the said order dated 10/08/2001.

4. The Applicant/Official Liquidator has filed the present application praying therein:

a) To extend time for bringing these facts to the notice of this Court.

b) To set aside the said order dated 10/08/2001.

It is the submission of Ms. Razaq, the learned Counsel on behalf of the Applicant that the said order is an error on part of the Court disposing of the proceedings in Company Application No.38-O-2001 on the assumption that there was an affidavit filed, when no such affidavit was filed in the said proceedings but the affidavit was filed in proceedings No. 35-O-2001.

5. There is no dispute as to the facts pleaded in the application but the only objection taken by Shri Dessai, the learned Counsel on behalf of Respondents No. 1 & 3 is that the said error could not be corrected under Section 153 of the Code of Civil Procedure. Section 153 gives general power to amend and it provides that the Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Needless to observe that the said proceedings bearing No.38-O-2001 came to be disposed of on account of patent error committed by this Court. It is well settled that “actus curie neminem gravabit (an act of the court shall prejudice no man). Since there has

been patent error committed by this Court, it needs correction. The contention that it cannot be corrected pursuant to the powers given under Section 153 of CPC cannot be accepted. Consequently the application is allowed and the said order dated 10/08/2001 is hereby set aside and the Company Application No. 38-O-2001 is restored to file.

N.A. BRITTO, J.

NH